

BEFORE THE MINNESOTA

BOARD OF DENTISTRY

In the Matter of
Michael Mattingly, D.D.S.
License No. D9998

**STIPULATION AND ORDER FOR
CONDITIONAL LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists, to refer complaints against dentists to the Attorney General for investigation, and to take disciplinary action when appropriate.

The Board received a complaint(s) against Michael Mattingly, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint(s) and referred the matter to the Minnesota Attorney General's Office ("AGO") for investigation. Following the investigation, the Committee held a conference with Licensee on January 21, 2005. The Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the matters referred to in this stipulation. Licensee states that Licensee does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

B. Facts. This stipulation is based upon the following facts:

Background

1. On January 23, 2001, Licensee entered into an Agreement for Corrective Action ("2001 ACA") with the Committee. It was based upon findings of inadequate infection control, substandard recordkeeping, auxiliary misuse, and non-cooperation. Among other things,

the 2001 ACA required Licensee to submit to at least one unannounced office inspection by a Board representative to review Licensee's infection control and recordkeeping. On March 6, 2003, the Board's representative conducted the inspection and submitted a report of the findings to the Committee. In addition, the Board received at least one complaint which was subsequently investigated by the AGO. The AGO investigator also submitted its findings to the Committee. After reviewing the reports and patient records, the Committee has determined that Licensee failed to maintain adequate safety and sanitary conditions for a dental office and failed to make or maintain adequate records for his patients as indicated under the section entitled "Findings From Office Inspection" below.

Improper Billing / Recordkeeping

2. Licensee has improperly billed the patient, third-party payor, and/or others relating to the practice of dentistry when he billed for different services than those actually rendered. Examples include the following:

a. Licensee failed to provide a comprehensive oral evaluation to the following patients as defined by the American Dental Association's *Current Dental Terminology*¹ ("CDT manual"). However, each patient's billing history indicated that Licensee billed the patient for a comprehensive oral evaluation.

1) On the dates specified below, Licensee billed each patient's insurance company for a comprehensive oral evaluation(s) on the following patients. However, Licensee failed to perform an evaluation and document each patient's extraoral and intraoral hard

¹ A comprehensive oral evaluation is defined as being typically used by a general dentist and/or specialist when evaluating a patient comprehensively. It is a thorough evaluation and recording of the extraoral and intraoral hard and soft tissues. It may require interpretation of information acquired through additional diagnostic procedures.... This would include the evaluation and recording of the patient's dental and medical history and a general health assessment. It may typically include the evaluation and recording of dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, oral cancer screening, etc. See, Diagnostic Codes, American Dental Association's *Current Dental Terminology, Fourth Edition* (CDT-4/2003).

and soft tissues to include, but not limited to, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions and charting, hard and soft tissue anomalies, and oral cancer screening.

Patient Numbers	Billing Dates
7	January 6, 2003
8	January 29, 2003
11	March 19, 2003
12	March 25, 2003
14	November 3, 2003
15	October 31, 2003
16	February 12, 2003 August 27, 2003
18	December 23, 2002 July 31, 2003 November 24, 2003
20	August 6, 2003 September 24, 2003

2) During the AG investigation, Licensee admitted to the investigator that “there’s no documentation” to support the comprehensive oral examinations billed for patients 14, 15, 16, 18 and 20 on the dates indicated in paragraph 2.a.(1) above. Licensee indicated to the investigator that he performs a comprehensive oral examination on all “routine and new patients” that includes the following: examines teeth for the presence of “restoring restorations”; decay; mobility; malocclusion (if severe); charts presence or absence of teeth; charts periodontal probing with presence of inflammation; reviews the health and dental history including previous dentists and attitude towards dentistry/dentists; documents the chief complaint; documents the presence of pain; and conducts a physical examination. Furthermore, Licensee failed to fulfill the requirements of a comprehensive oral examination according to the CDT manual.

b. According to the patient's billing history, Licensee billed the insurance company using an oral surgery procedure code that was an erroneous code from the actual surgical services rendered to the patient.

1) On the dates specified below, Licensee performed surgical extractions on the following patients. After reviewing the patient's progress notes and relevant radiographs, the Committee determined the proper oral surgery procedure code for these teeth as indicated below for each patient.

PATIENT #	TOOTH #	PROCEDURE CODE USED FOR BILLING *	PROPER PROCEDURE CODE BASED ON SERVICE RENDERED *	DATE OF SERVICE
14	A	7250	7140	11/03/03
17	2	7230	7210	08/27/03
21	3 and 27	7250	7140	03/13/03
	9	7250	No Code – no root tip present on 03/06/03 periapical radiographs.	04/01/03

*Oral Surgery Procedure Codes from the American Dental Association's *Current Dental Terminology Fourth Edition (CDT-4/2003)*

- 7140: Extraction, erupted tooth or exposed root. Includes routine removal of tooth structure and closure, as necessary.
- 7210: Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth. Includes cutting of gingiva and bone, removal of tooth structure, and closure.
- 7230: Removal of impacted tooth – partially bony. Part of crown covered by bone; requires mucoperiosteal flap elevation and bone removal.
- 7250: Surgical removal of residual tooth roots (cutting procedure). Includes cutting of soft tissue and bone, removal of tooth structure, and closure.

2) During the AG investigation, Licensee admitted to the investigator that for patients 14 and 17 he used incorrect procedure codes. He informed the investigator of the procedure code that he should have used and attributed the error to a "mistake in billing."

c. According to the patient's record and billing history, Licensee billed the patient's insurance company twice for the extraction of the same tooth on different dates. Patient 19's progress notes and billing history indicate that tooth #1 was extracted and billed for on both March 30, 2001 and January 14, 2003 by Licensee. When asked by the investigator during the investigation about the entries for tooth #1, Licensee responded that he actually extracted tooth #1 for patient 19 on March 30, 2001, and admitted that the procedure was "re-billed" in error on January 14, 2003. During the conference, Licensee told the Committee that he failed to notice that a root tip remained following the initial extraction of tooth #1 and he removed the root tip at the latter appointment. Licensee admitted that he erred in billing the patient twice for the extraction.

Furthermore during the conference, Licensee explained that his office employee who handled insurance claims interpreted what procedural code to use from his progress notes in the patient's chart. However, Licensee admitted that he failed review the procedural codes for errors before the patient's insurance was submitted for payment.

Substandard Oral Surgery

3. Licensee failed to provide adequate oral surgery care to his patient when he failed to contact patient 9's physician regarding the patient's medical history indicating a blood disease/hemophilia prior to performing an extraction of the patient's tooth.

Substandard Radiographic Diagnosis / Recordkeeping

4. Licensee failed to obtain appropriate radiographs for the purpose of assessing the patient's dental health. Examples include the following:

a. For patient 1, Licensee performed operative treatment on teeth #22, #26, and #27 and extracted teeth #24 and #28 on August 22, 2002, failing to obtain appropriate radiographs to assess periapical pathology and to provide an appropriate diagnosis of these teeth. The two periapical radiographs indicated in patient 1's progress notes were not evident in the

patient's chart. On patient 1's November 20, 2001 panorex radiograph, which Licensee failed to obtain from the patient's previous dentist prior to providing treatment, there is evidence of apical radiolucencies associated with a number of the patient's teeth. Furthermore in the patient's progress notes, Licensee failed to indicate his diagnosis to extract teeth #24 and 28.

b. On September 15, 2002 for patient 1, Licensee extracted teeth #6, #7, #8 and #9, but failed to obtain appropriate radiographs to assess periapical pathology and to provide an appropriate diagnosis of these teeth.

Unprofessional Conduct

5. Licensee engaged in conduct unbecoming a person licensed to practice dentistry when treating his patients, as follows:

a. Patient 22 described Licensee as being very belittling and unprofessional. On December 15, 2003, patient 22 claimed that Licensee discussed her insurance information in front of other patients in his dental office. In addition, Licensee immediately left the operatory after removing patient 22's tooth without acknowledging her. During the conference, Licensee stated that there were no other patients in his office when patient 22 came in for her appointment.

b. Licensee saw patient 23 to extract her wisdom tooth on February 20, 2003. Patient 23 claimed that Licensee became angry with her when she cried during the administration of anesthetic and the extraction procedure. During the conference, Licensee acknowledged that he made inappropriate comments to this patient about her crying.

c. During the conference, the Committee concluded that Licensee lacked the required knowledge regarding the Health Insurance Portability and Accountability Act (HIPAA) regulations and how the regulations applied to his practice.

Additional Substandard Recordkeeping

6. Licensee has failed to make or maintain adequate records for his patients.

Examples include the following:

- a. Licensee failed to consistently document that he obtained the patient's informed consent to the treatment he provided for patients.
- b. Licensee failed to adequately document his diagnosis and treatment plan prior to performing extractions and/or providing operative treatment for patients 6, 7, 8, 9, 10, 11, 12, 16, 19 and 23.
- c. Licensee failed to consistently document appropriate information about the type of local anesthetic administered and/or the amount of local anesthetic used for patients 2, 3, 6 and 9.
- d. Licensee failed to document his diagnosis in the patient's progress notes prior to performing a hard tissue biopsy for patients 2, 12 and 20.
- e. Licensee failed to document a complete record of the patient's existing oral health status including but not limited to dental caries, missing or unerupted teeth, restorations, and periodontal conditions and charting for patients 2, 4 through 16, 18, 19, 20, 22 and 23.
- f. Licensee failed to indicate in patient 18's progress notes his rationale for initially extracting tooth #13 and for having to extract the root tip of tooth #13 later on. During the investigation, Licensee explained to the investigator that tooth #13 for patient 18 was partially extracted on December 28, 2001. On this same day, the root tip of tooth #13 had broken off and it was decided to leave the root tip due to its close proximity to patient 18's sinus cavity. On July 31, 2003, Licensee extracted the root tip of tooth #13 for patient 18 because a fistula developed in the area of tooth #13.

g. The Committee acknowledges that Licensee completed the recordkeeping course in July 2001 as required by his 2001 ACA. However, it was determined by the Committee at the conference that Licensee still fails to understand the importance of making or maintaining adequate patient records in compliance with the recordkeeping rules as described within Minn. R. 3100.9600.

Findings From Office Inspection

7. The findings from the office inspection conducted on March 6, 2003, are as follows:

a. Licensee failed to maintain adequate safety and sanitary conditions for a dental office. For example, Licensee failed to follow proper handling procedures for an anesthetic syringe needle by leaving an anesthetic syringe with an uncapped needle lying out on an instrument tray prior to seating his next patient.

b. Licensee has failed to make or maintain adequate records for his patients.

Examples include the following:

1) Licensee failed to obtain personal patient data such as the name and phone of the emergency contact person on patients 26 and 28.

2) Licensee failed to document the following patient information: the patient's reason for each dental visit for patient 26; initial medical and dental histories on patients 24, 25, 26 and 28; and update medical histories for patients 26 and 28.

3) Licensee failed to document a complete record of the patient's existing oral health status including but not limited to dental caries, missing or unerupted teeth, restorations, and periodontal conditions and charting for patient 27.

4) Licensee failed to adequately document his diagnosis and treatment plan prior to performing dental treatment for patients 26 and 27.

5) Licensee failed to document that he obtained the patient's informed consent to the treatment he provided for patients 25, 26 and 27.

6) Licensee failed to consistently document appropriate information about the type of local anesthetic administered and/or the amount of local anesthetic used for patient 25.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. §150A.08, subd. 1(6) and Minn. R. 3100.6200 A (personal conduct which brings discredit to the profession of dentistry); Minn. Stat. § 150A.08, subd. 1(6) and Minn. R. 3100.6200 B (repeated performance of dental treatment which falls below accepted standards); Minn. Stat. §150A.08, subd. 1(6) and Minn. R. 3100.6200 I (improperly billing a patient, third party payor, or others relating to the practice of dentistry); Minn. Stat. § 150A.08, subd. 1(10) and Minn. R. 3100.6200 K and 3100.6300 (failure to maintain adequate safety and sanitary conditions for a dental office); Minn. R. 3100.9600 (failure to make or maintain adequate dental records on each patient) and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order which places CONDITIONS on Licensee's license to practice dentistry in the State of Minnesota as follows:

CONDITIONS

1. Coursework. Licensee shall successfully complete the coursework described below. Licensee is responsible for locating, registering for, and paying for all coursework taken pursuant to this stipulation and order. When Licensee attends these dental school courses, Licensee must provide each instructor with a copy of this stipulation and order prior to commencing a course. Licensee shall pass all courses with a grade of 70 percent or a letter grade "C" or better. Licensee's signature on this stipulation and order constitutes authorization for the course instructor(s) to

provide the Committee with a copy of the final examination and answers for any course Licensee takes. Licensee's signature also authorizes the Committee to communicate with the instructor(s) before, during, and after Licensee takes the course about Licensee's needs, performance and progress. None of the coursework taken pursuant to this stipulation and order may be used by Licensee to satisfy any of the continuing dental education/professional development requirements of Minn. R. 3100.5100, subpart 2. The coursework is as follows:

a. Treatment Planning / Recordkeeping. Within nine months of the effective date of this order, Licensee shall complete the treatment planning / recordkeeping course entitled "Dental Patient Management: Dental Records and Treatment Planning Fundamentals" offered by Dr. Riley Nelson at the University of Minnesota Dental School to include instruction in the rationale for obtaining pre-operative radiographs prior to providing dental treatment.

b. Ethics. Within nine months of the effective date of this order, Licensee shall complete an individually designed course in ethics offered by Dr. Muriel Bebeau at the University of Minnesota Dental School to include instruction in responsibility and management of third party submissions to insurance agencies and proper professional conduct towards patients. Licensee's signature on this stipulation and order is authorization for Dr. Bebeau and the Committee to communicate before, during, and after Licensee takes the course about his needs, performance, and progress.

2. Written Reports and Information. Licensee shall submit or cause to be submitted to the Board the reports and/or information described below. All reports and information are subject to approval by the Committee:

a. Reports on All Coursework. Within 30 days of completing any coursework, Licensee shall submit to the Board (a) a transcript or other documentation verifying that Licensee has successfully completed the course, if the course is a graduate or undergraduate

dental school course, (b) a copy of all materials used and/or distributed in the course, and (c) a written report summarizing how Licensee has implemented this knowledge into Licensee's practice. Licensee's report shall be typewritten in Licensee's own words, double—spaced, at least two pages and no more than three pages in length, and shall list references used to prepare the report. Licensee's report regarding recordkeeping shall include sample recordkeeping forms that Licensee has begun to use in his practice.

3. Office Inspection - Recordkeeping. Licensee shall cooperate with at least one unannounced office visit during normal business hours by a representative of the Board, additional visits shall be at the discretion of the Committee. The representative shall randomly select, remove, and make copies of original patient records, including radiographs, to provide to the Committee for its review of Licensee's recordkeeping practices.

4. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

c. In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minn. R. 3100.6300 and 6950.1000 through 6950.1080, and with Centers for Disease Control and Prevention, Public Health Service, United States Department of Health and Human Services, *Guidelines for Infection Control in Dental Health-Care Settings - 2003*, Morbidity and Mortality Weekly Report, December 19, 2003 at 1.

d. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order, the Board's authorized representatives shall have the right to inspect Licensee's dental office(s) during normal office hours without prior notification and to select and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

e. In the event Licensee should leave Minnesota to reside or practice outside the state, Licensee shall notify the Board in writing of the new location within five days. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota unless Licensee demonstrates that practice in another state conforms completely to this stipulation and order.

5. Removal of Conditions. Licensee may petition to have the conditions removed from Licensee's license at any regularly scheduled Board meeting provided that Licensee's petition is received by the Board at least 30 days prior to the Board meeting. Licensee shall have the burden of proving that Licensee has complied with the conditions and that Licensee is qualified to practice dentistry without conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the conditions should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the conditions imposed by this order.

6. Fine for Violation of Order. If information or a report required by this stipulation and order is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order, the Committee may fine Licensee \$100 per late report or other violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If Licensee fails to do so, the Committee may impose

additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Licensee waives the right to seek review of the imposition of these fines under the Administrative Procedure Act, by writ of certiorari under Minn. Stat. § 480A.06, by application to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

7. Additional Discipline for Violation of Order. If Licensee violates this stipulation and order, Minn. Stat. ch. 150A, or Minn. R. ch. 3100, the Board may impose additional discipline pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation alleged by the Committee and of the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

b. At the hearing before the Board, the Committee and Licensee may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this stipulation and order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or a limitation on Licensee's practice, or suspension or revocation of Licensee's license.

8. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order shall be considered a violation of Minn. Stat. § 150A.08, subd. 1(13). The

Committee shall have the right to attempt to resolve an alleged violation of the stipulation and order through the procedures of Minn. Stat. § 214.103, subd. 6. Nothing herein shall limit (1) the Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or (2) the Committee's and the Board's right to temporarily suspend Licensee pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

9. Attendance at Conference. Licensee attended a conference with the Committee on January 21, 2005. Although Licensee was informed in the Notice of Conference that he could be represented by legal counsel, Licensee has voluntarily and knowingly waived legal representation. The following Committee members attended the conference: Freeman Rosenblum, D.D.S., Ron King, D.D.S, and Nadene Binge, D.H. Assistant Attorney General Tamar Gronvall represented the Committee at the conference.

10. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the adequateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

11. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation

and order shall be null and void and shall not be used for any purpose by either party hereto. If this stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and section 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.

12. Record. This stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

13. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner Data Bank.

14. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between the parties hereto. Licensee is not relying on any other agreement or representations of any kind, verbal or otherwise.

15. Service and Effective Date. If approved by the Board, a copy of this stipulation and order shall be served personally or by first class mail on Licensee. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

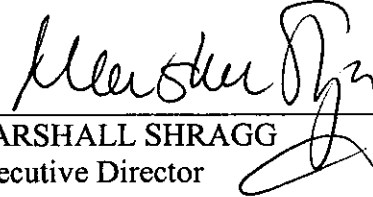
LICENSEE



MICHAEL MATTINGLY, D.D.S.

Dated: 3/14/, 05

COMPLAINT COMMITTEE



By:

MARSHALL SHRAGG
Executive Director

Dated: 3/14, 05

ORDER

Upon consideration of the foregoing stipulation and based upon all the files, records, and proceedings herein,

The terms of the stipulation are approved and adopted, the recommended disciplinary action set forth in the stipulation is hereby issued as an order of this Board placing CONDITIONS on Licensee's license effective this 1st day of April, 2005.

MINNESOTA BOARD
OF DENTISTRY

By:


LINDA BOYUM, R.D.A.
President